

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SHAWN FRANCIS,
11 Plaintiff,
12 v.
13 STEVEN HAMMOND, et al.,
14 Defendants.

15 CASE NO. C12-6023 RBL-JRC
16 ORDER DENYING MOTION FOR
17 STAY PENDING APPEAL
18 [Dkt. #29]

19 THIS MATTER is before the Court on Defendants' Motion to Stay [Dkt. #29] this
20 Court's Order [Dkt. #25] Adopting Magistrate Judge Creatura's Report and Recommendation
21 [Dkt. #22] and enjoining Defendants to provide medical services to the Plaintiff. The
22 Defendants have appealed the Order and now ask this Court to stay its Order pending that
23 appeal, under Fed. R. Civ. P. 62(c):

24 While an appeal is pending from an interlocutory order or final judgment that
25 grants, dissolves, or denies an injunction, the court may suspend, modify, restore,
26 or grant an injunction on terms for bond or other terms that secure the opposing
27 party's rights.

28 The following factors regulate the decision whether or not to stay an injunction pending
29 appeal:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Hilton v. Braunschweig, 481 U.S. 770, 776(1987) (citations omitted). This standard is, of course, comparable to the standard against which the Court's injunction was initially issued:

The proper legal standard for preliminary injunctive relief requires a party to demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”

Stormans, Inc. v Selecky, 586 F.3d 1109, 1127 (2009) (Citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).

Plaintiff Francis met his burden of demonstrating a likelihood of success on the merits and of the remaining factors warranting the injunction in the first place. Defendants have not and cannot make the reverse showing on any factor in seeking a stay. Importantly, the potential harm to Francis in not getting the medical procedure outweighs the potential harm to the Defendants in incurring its cost unnecessarily. For the reasons outlined in the Report and Recommendation, the Defendants' Motion to Stay enforcement of the Court's Injunction pending appeal is DENIED.

IT IS SO ORDERED.

Dated this 10th day of June, 2013.

Ronald B. Lighter

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE